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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,451	03/12/2001	Earl J. Votolato	SPELL-003A	9847

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EXAMINER

DRUAN, THOMAS J

ART UNIT PAPER NUMBER

3724

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/804,451

Applicant(s)

VOTOLATO, EARL J.

Examiner

Thomas J. Druan, Jr.

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is in response to Applicant's response received on 31 October 2002.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,878,501 to Owens et al. (hereinafter Owens).

Owens discloses the invention as claimed including a handle 16 with a distal portion 32 and a generally hollow interior portion (a slot) 52; a blade 12 secured to and extending from said distal portion, said blade having a cutting edge (inherent); an integral, generally cylindrical blade cover 14, with a longitudinal slit through which the blade resides, for covering the cutting edge of the blade when the tool is not in use (note: "cylindrical" need not be a circular cylinder); a blade cover retainment member 78 for lockedly maintaining the blade cover in a position covering the cutting edge of the blade; a hand operable releaser 76 for releasing the retainment member from a locking configuration; a hand operable blade cover driver 72 for moving the blade cover an exposure distance (which is any distance that the cover is moved so as to expose the blade) and exposing the cutting edge of the blade for use; and an intercept member 74 for disengaging the blade cover driver upon blade cover movement exceeding the exposure distance and dispatching the blade cover to the locking configuration covering the cutting edge of the blade (column 4, lines 17-37).

The releaser and driver are incorporated as a trigger assembly comprising an exteriorly accessible finger-movable trigger lever 74/76 extending from the handle and in engaged communication first with the retainment member for releasing said member from the locking configuration upon initial trigger lever movement (when the trigger lever is pushed in) and in engaged communication second with a proximal site of the blade cover for moving the blade cover said exposure distance upon continued trigger lever movement (when the trigger lever is slid away from the blade). Said retainment member, said intercept member, and said proximal site of the blade cover are disposed within the generally hollow interior portion of the handle. The intercept member, which is part of the trigger lever, is disposed within a travel path of the blade cover (the slot 52) beyond said exposure distance for disengaging the engaged communication of the trigger lever with said proximal site of the blade cover when the blade cover is to be returned to a position that covers the cutting edge of the blade.

### ***Response to Arguments***

4. Applicant's arguments filed 31 October 2002 have been fully considered but they are not persuasive. Applicant contends that "Owens does not teach, disclose or suggest that if the blade guard is moved back too far to a certain point in relation to the notches exposing the cutting edge of the blade that an intercept member will contact the blade cover and disengage it back to where the blade cover is covering the cutting edge of the blade and is in a locked position."

Applicant's remarks are well taken; however, it is the position of the Examiner that the Owens reference anticipates the claimed invention. Owens discloses a utility knife with a retractable blade guard using a trigger member for retracting the blade guard when the knife is to be used. Owens discloses every structural limitation of the instant invention as claimed, including an intercept member 74 for disengaging the blade cover driver 72 upon blade cover movement exceeding the exposure distance and dispatching the blade cover 14 to the locking configuration covering the cutting edge of the blade 12. An exposure distance has not been strictly defined in the claims, and only makes reference to "exposing the cutting edge of the blade for use" in part "f" of claim 1. Therefore, if the blade cover 14 of Owens is retracted so as to expose any amount of the cutting edge of the blade 12, it has reached an exposure distance and the intercept member 74, along with releaser 76, can disengage the blade cover driver at any point beyond the exposure distance, and once the blade cover driver 72 is disengaged, the blade cover can be dispatched to a locking configuration covering the cutting edge of the blade.

For at least the reasons above, the reference anticipates the invention as claimed, and therefore the rejection is proper.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*ogrg*  
tjd

January 23, 2003

*Boyer Ashley*  
**BOYER ASHLEY**  
**PRIMARY EXAMINER**